

787 KAR 2:030. Classifying a person as unemployed; appeals.

RELATES TO: KRS 141.065, Administrative Order HR 86-1

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.065 provides a credit to taxpayers for hiring a person classified as unemployed. The Department for Employment Services is required by Administrative Order HR 86-1 to perform all administrative functions pertaining to the Unemployment Tax Credit Program. The Secretary of the Cabinet for Workforce Development may adopt rules and administrative regulations as are necessary to implement the Unemployment Tax Credit Program and as are necessary to cooperate with the Revenue Cabinet for the proper administration of the program. The function of this administrative regulation is to establish when a person is classified as unemployed for purposes of the Unemployment Tax Credit Program, and to establish the appeals process and general rules for the conduct of hearings regarding the denial of the unemployment tax credit to a taxpayer.

Section 1. Definitions. (1) "Actively seeking work" means a person making a reasonable effort to obtain work at least sixty (60) days prior to hire as might be expected of a prudent person under like circumstances, including occupations, salary, number of employing firms in area and distance involved.

(2) "Full-time employment" means, for labor market attachment purposes, if a person worked more than twenty-three (23) hours per week or more than 100 hours per month for at least thirty (30) days prior to the sixty (60) day, minimum unemployed period.

(3) "Labor market attachment" means had full-time employment before the sixty (60) day minimum unemployed period. Self-employment can be used to meet this requirement.

(4) "Readily available" means a person who at least sixty (60) days prior to hire was willing and able to enter into full-time employment; and possessing the ability to overcome any barriers, including arranging child care, part-time work or school schedules, transportation, or other conditions that would prevent an individual from accepting full-time employment.

Section 2. (1) A person shall be considered "classified as unemployed" for purposes of the Unemployment Tax Credit Program if:

(a) Prior to the sixty (60) day minimum unemployment period, the person had prior labor market attachment; and

(b) During the sixty (60) day minimum unemployment period prior to being hired was:

1. Not working; or
2. Employed not more than twenty-three (23) hours per week; or
3. Employed not more than 100 hours per month; and
4. Actively seeking and readily available for full-time employment.

(2) Involvement in a strike or labor dispute during the sixty (60) day minimum unemployment period shall not meet the definition of unemployment for purposes of the Unemployment Tax Credit Program.

Section 3. Request for Reconsideration. (1) Any party aggrieved as a result of the denial of the unemployment tax credit to a taxpayer shall request a reconsideration of the denial by contacting the state tax credit unit. The request for reconsideration shall be in writing. The request for reconsideration shall be filed within fifteen (15) days of the mailing date of the denial notice.

(2) The aggrieved party shall submit any additional information to be considered during the reconsideration process in writing within ten (10) days of the mailing date of the request for reconsideration.

(3) The state tax credit unit shall issue its decision within forty-five (45) days of receipt of the request for reconsideration. Upon reconsideration, a certificate may be issued or a second denial letter stating appeal rights for a formal hearing may be issued.

Section 4. Appeals to Hearing Officer. (1) Within fifteen (15) days of the mailing date of a second denial notice, an aggrieved party shall file a written request for hearing with the state tax credit unit. Upon receipt of the written request for hearing, the Secretary of the Cabinet for Workforce Development shall appoint an impartial hearing officer to hear and decide appealed denials.

(2) A hearing shall be scheduled and commenced within sixty (60) days of receipt of the request for hearing. Notice of the hearing shall be mailed by certified mail, return receipt requested, to the parties.

(3) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses, and any other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences shall be open to the public. A written prehearing conference report shall be part of the record.

(4) Any party to a hearing and the administering agency may be represented by counsel and may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. Depositions shall not be permitted for the purpose of discovery; however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas, and may admit relevant and probative evidence, and shall conduct the hearing in accordance with reasonable administrative practice.

(5) All testimony at the hearing shall be recorded.

(6) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument, and may terminate or exclude irrelevant or redundant evidence, testimony, or argument.

(7) Within thirty (30) days of adjournment of the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the record of the proceeding. (22 Ky.R. 499; Am. 912; eff. 11-6-95; Crt eff. 2-24-2020.)